

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Susquehanna, Pennsylvania and Conklin,)
New York)

MM Docket No. 99-278
RM-9424

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau - Mail Stop 1800D5

JOINT COMMENTS OF MAJAC AND EQUINOX

1. Majac of Michigan, Inc., ("Majac"), licensee of Station WKGB-FM, Channel 223A, Susquehanna, Pennsylvania, and Equinox Broadcasting Corporation ("Equinox"), licensee of Station WCDW(FM), Channel 263A, Conklin, New York, hereby jointly comment in support of proposals made in the Commission's *Notice of Proposed Rulemaking* in this proceeding, DA 99-149 (released September 10, 1999) ("*Notice*"), published at 64 FR 51284 (Sep. 22, 1999).

Statement

2. Majac and Equinox jointly filed a *Petition for Rule Making* ("*Petition*") on October 14, 1998, requesting that the communities of license, but not the frequencies, of WKGB-FM and WCDW(FM) be exchanged. WKGB-FM would continue to operate on Channel 223A, but the license would be modified to specify operation at Conklin, rather than Susqueheanna; and WCDW(FM) would continue to operate on Channel 263A, but the license would be modified to specify operation at Susquehanna, instead of Conklin. Equinox indicated it did not propose to relocate the transmitter for WCDW(FM), but because it currently operates on a short-spaced basis,

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it did set forth a theoretical site that showed the reallocation satisfied the Commission's technical spacing requirements. Majac did propose a minor modification of WKGB-FM's transmitter site, and it provided an engineering showing that such a modification would fully comply with the Commission's technical regulations.¹

3. On September 10, 1999, the Commission released its *Notice*, proposing to amend the FM Table of Allotments as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Susquehanna, PA	223A	263A
Conklin, NY	263A	223A

In connection with this reallocation, the Commission also proposed to modify the licenses of WKGB-FM and WCDW(FM) accordingly. The Commission noted that because the proposal was an exchange of allotments, local service would be maintained at both Susquehanna and Conklin, and no community would be deprived of a local transmission service. Further, the FCC recognized that the exchange would allow WKGB-FM to expand its service area, while any areas that would lose service as a result of the proposed WKGB-FM transmitter relocation would continue to receive service from at least five other radio stations.

Response to Commission Requests

4. In the *Notice*, the Commission requested that Equinox provide a gain/loss study for the alternate fully-spaced site for Channel 263A at Susquehanna. This study is attached hereto as *Exhibit A*. It shows that WCDW(FM) would provide city-grade coverage (3.16 mV/m) over Susquehanna, Pennsylvania from the fully-spaced site. The 60 dBu contour of WCDW(FM) would increase from covering 2,498.3 square kilometers to 2,516.1 square kilometers. 2,216 persons would

¹ A study of gain and loss areas was also submitted by Majac.

gain service, and while 10,189 would lose service, most persons in the loss area would continue to receive well in excess of five or more other primary radio services. *See Exhibit A.* Therefore, operation from the theoretical transmitter site would be wholly consistent with Commission precedent.²

5. The Commission also requested that Majac and Equinox submit a copy of the agreement whereby Majac has agreed to compensate Equinox for its participation in this proceeding and for accepting a modification of the WCDW(FM) license. A copy of this agreement is attached hereto as *Exhibit B.*³

Declaration of Intent

6. If the proposal set forth in the *Notice* is adopted, Majac intends to promptly file the appropriate application for Channel 223A at Conklin, New York, and if authorized, will promptly construct the WKGB-FM facilities contemplated therein. In addition, Equinox intends to promptly file the appropriate application to modify its license to specify operation on Channel 263A at Susquehanna, Pennsylvania.⁴

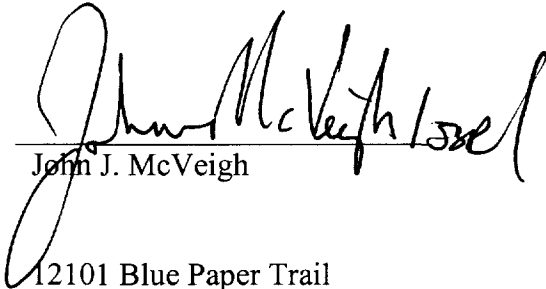
² See, e.g., *Arcadia and Fort Meade, Florida*, 13 FCC Rcd 1989 (Alloc. Br. 1998) (granting the reallocation of a station even though loss areas were created, as the loss areas would continue to be well-served by five or more reception services.)

³ Although Equinox and Majac believe that the agreement is not relevant to their reallocation request, they are submitting it so that their reallocation request may be granted in an expeditious fashion. They submit that the amount to be paid by Majac to Equinox constitutes "commercial or financial information" under Section 0.457(d) of the Rules and thus should not be disclosed to competitors in the marketplace. Accordingly, that figure has been redacted.

⁴ Majac will file its application on Form 301, because it proposes facilities changes. It is submitted that Equinox should be able to file its application directly on Form 302-FM, because the only change will be its community of license.

Conclusion

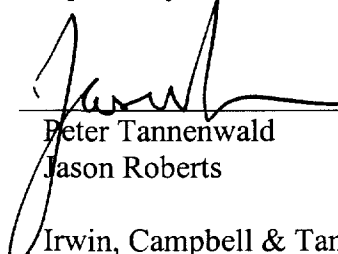
For the foregoing reasons, Majac and Equinox hereby respectfully request that the Commission re-allot Channel 263A from Conklin, New York to Susquehanna, Pennsylvania, and modify the license of radio station WCDW(FM) accordingly, and to re-allot Channel 223A from Susquehanna, Pennsylvania to Conklin, New York, and to modify the license of radio station WKGB-FM accordingly (with the reference coordinates previously specified).


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Counsel for Equinox
Broadcasting Corporation

Dated: November 1, 1999

Respectfully submitted,


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Jason Roberts
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Counsel for Majac of Michigan, Inc.

EXHIBIT A

**ENGINEERING STATEMENT IN
SUPPORT OF COMMENTS
MM DOCKET 99-278
CHANNEL 223A - CONKLIN, NY
CHANNEL 263A - SUSQUEHANNA, PA**

**Majac of Michigan, Inc.
Susquehanna, PA**

October 28, 1999

**Prepared For: Mr. Marc Steenbarger
Majac of Michigan, Inc.
3301 Country Club Road
Suite 2218
Endwell, NY 13760**

CARL E. SMITH CONSULTING ENGINEERS

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Roy P. Stype, III
Elmer L. Steingass

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Table 1.0 - Present And Proposed WCDW Area And Population

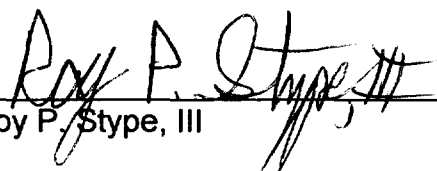
Table 1.1 - Partial Listing Of Stations Providing Full Time Service To WCDW
Gain And Loss Areas

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

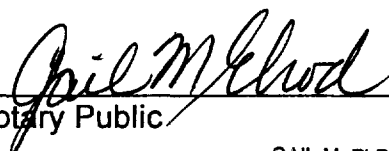
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Majac of Michigan, Inc. to prepare the attached "Engineering Statement In Support of Comments - MM Docket 99-278 - Channel 223A - Conklin, NY - Channel 263A - Susquehanna, PA."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **October 28, 1999.**



Notary Public

GAIL M. ELROD, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires May 26, 2002

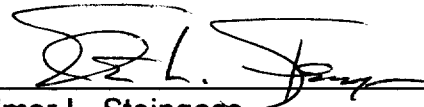
/SEAL/

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Elmer L. Steingass, being duly sworn, deposes and states that he is a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Majac of Michigan, Inc. to prepare the attached "Engineering Statement In Support of Comments - MM Docket 99-278 - Channel 223A - Conklin, NY - Channel 263A - Susquehanna, PA."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Elmer L. Steingass

Subscribed and sworn to before me on **October 28, 1999**.



Notary Public

/SEAL/

GAIL M. ELROD, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires May 26, 2002

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Majac of Michigan, Inc, licensee of Radio Station WKGB-FM - Susquehanna, Pennsylvania, and proponent of MM Docket 99-278, which proposes a swap of communities of license between WKGB-FM and WCDW(FM) - Conklin, New York. Specifically, the above referenced Notice of Proposed Rulemaking ("NPRM") in this proceeding proposes to reallocate Channel 223A from Susquehanna, Pennsylvania to Conklin New York for use by WKGB-FM and to reallocate Channel 263A from Conklin, New York to Susquehanna, Pennsylvania for use by WCDW. This engineering statement supports comments in this proceeding and supplies additional information requested in the NPRM .

Although it is not actually proposed to relocate the WCDW transmitter site, it was necessary to specify reference coordinates for Channel 263A in Susquehanna which differ from those of the presently licensed WCDW transmitter site, due to the fact that the present WCDW operating facilities were authorized from a short spaced site under the FCC's contour protection rules. Paragraph 3 of this NPRM requests the submission of additional data regarding the gain and loss areas associated with this proposal, based on the assumption that WCDW would operate from the proposed Susquehanna reference coordinates. Figure 1.0 is a map exhibit showing the predicted 1 mV/m contour for Channel 263A in Susquehanna for operation with maximum Class A facilities from the allotment reference site. This figure also shows the predicted 1 mV/m contour for the present WCDW operating facilities¹. Both of these contours were projected assuming uniform terrain. Table 1.0 presents detailed data on the present

¹Pursuant to FCC policy, the present WCDW operating facilities were employed, since they exceed 3 kilowatts at 100 meters above average terrain, or equivalent.

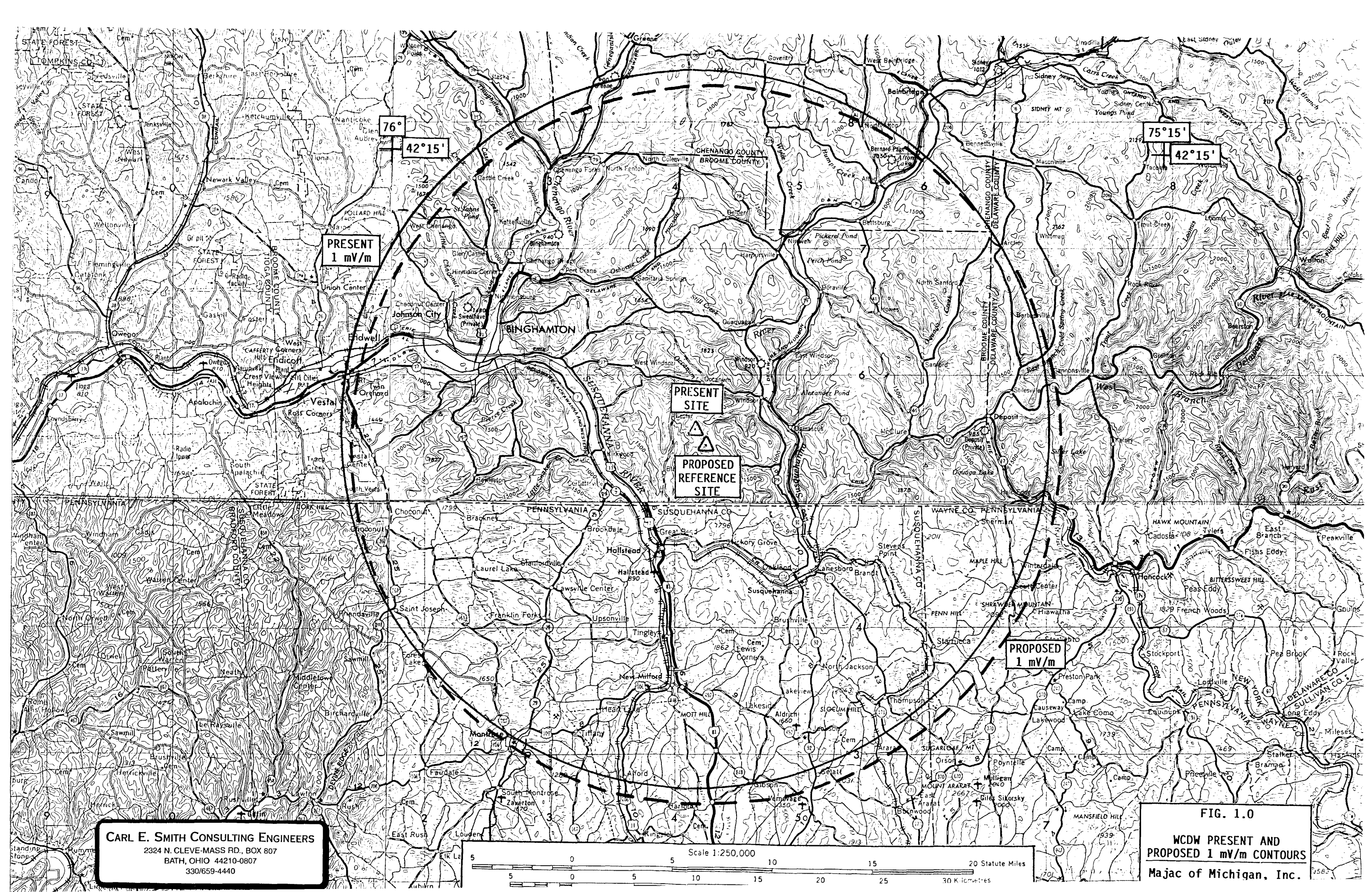
and proposed populations and areas, as well as the gain and loss areas. All population data presented in this table is based on the 1990 U. S. Census.

A study was then conducted to identify other stations which provide full time aural service to the gain or loss areas. For all FM stations, uniform terrain was assumed and all classes of stations were assumed to provide service to their 1 mV/m contour, pursuant to FCC policy. All commercial Class B and B1 FM stations and noncommercial educational FM stations, operating in the nonreserved band (except for Class D stations, which were not considered at all in these studies) were assumed to be operating with the maximum facilities permitted for their class. Calculations for all noncommercial educational FM stations operating in the reserved band, except Class D, were based on the stations' actual notified operating facilities. Class A stations were considered to be operating with the greater of their actual operating facilities or the former Class A maximum of 3 kilowatts effective radiated power at 100 meters above average terrain. In the case of vacant commercial Class A allotments, operation was assumed from the allotment reference coordinates with the former maximum Class A facilities of 3 kilowatts effective radiated power at 100 meters above average terrain. It was not necessary to consider service from AM stations to document that these gain and loss areas are well served.

The study determined that all portions of the gain and loss areas will receive at least five other full time aural services, with most portions receiving well in excess of five other full time aural services. Table 1.1 is a tabulation of the stations and allotments which were examined to determine that all portions of these gain and loss areas receive a minimum of at least five other full time services. It should be noted that other stations, in addition to those listed in Table 1.1, also provide full time aural

service to portions of these gain and loss areas, but have not been listed, due to the fact that these studies were only carried to the point necessary to verify the existence of at least five other full time aural services to all portions of the loss and gain areas and made no attempt to determine the exact number of other full time aural services in excess of five to any portion of these areas.

As shown by this data, the entire WDCW gain and loss areas will be well served by at least five other full time aural services. Thus, the small loss area associated with the modifications proposed in this proceeding should not be an impediment to the proposed change in the WCDW community of license.



CARL E. SMITH CONSULTING ENGINEERS
2324 N. CLEVE-MASS RD., BOX 807
BATH, OHIO 44210-0807
330/659-4440

FIG. 1.0
WCDW PRESENT AND
PROPOSED 1 mV/m CONTOURS
Majac of Michigan, Inc.

TABLE 1.0

PRESENT AND PROPOSED
WCDW AREA AND POPULATION
Majac of Michigan, Inc
Susquehanna, PA

	Area (<u>Square Kilometers</u>)	Population (<u>1990 Census</u>)
Present	2,498.3	192,550
Gain	63.9	2,216
Loss	46.1	10,189
Proposed	2,516.1	184,577
Net Gain(Loss)	17.8	(7,973)

TABLE 1.1

PARTIAL LISTING OF STATIONS
PROVIDING FULL TIME SERVICE
TO WCDW GAIN AND LOSS AREAS

Majac of Michigan, Inc.
Susquehanna, PA

<u>Call</u>	<u>Frequency/ Channel</u>	<u>Location</u>
WCII	203B	Spencer, NY
WSKG-FM	207B	Binghamton, NY
WKXZ	230B	Norwich, NY
WIYN	234A	Deposit, NY
WPEL-FM	243B	Montrose, PA
WHWK	251B	Binghamton, NY
WAAL	256B	Binghamton, NY
Allotment	261A	Forest City, PA
WGGY	267B	Scranton, PA
WMRV-FM	289B	Endicott, NY
Allotment	294A	Windsor, NY

EXHIBIT B

STATION MODIFICATION AGREEMENT

This is a STATION MODIFICATION AGREEMENT (Agreement) entered into this 23rd day of July, 1998 by MAJAC OF MICHIGAN, INC. (Majac), a Michigan corporation, and EQUINOX BROADCASTING CORPORATION (Equinox), a Pennsylvania corporation, each a Party to this Agreement (and collectively, the Parties).

RECITALS

- A. Majac is the licensee of radio station WKGB-FM, Channel 223A, Susquehanna, Pennsylvania.
- B. Equinox is the licensee of radio station WCDW(FM), Channel 263A, Conklin, New York.
- C. Majac desires to improve the licensed facilities of radio station WKGB, consistent with this Agreement and with the rules, regulations, and policies of the Federal Communications Commission (FCC).
- D. Majac desires that Equinox cooperate with Majac in Majac's efforts to modify station WKGB by entering into a joint proposal to the FCC, under which Majac will propose the modification of Majac's license for WKGB to specify Conklin, New York as WKGB's city of license, and under which Equinox will propose the modification of Equinox's license for WCDW to specify Susquehanna, Pennsylvania, as WCDW's city of license.
- E. The FCC's procedural requirements mandate that such modifications of license be accomplished through amendments to §73.202(b) of the FCC's Rules, which must be pursued first through rule making under Part 1, Subpart C of the FCC's Rules, and then via applications for construction permits and/or modified station licenses after the successful conclusion of the rule making.
- F. Equinox is willing to facilitate Majac's efforts to improve the facilities of station WKGB. In that regard, Equinox is willing, pursuant to the terms and conditions set forth in this Agreement, to modify the facilities of station WCDW in order that Majac may achieve Majac's desired improvement of station WKGB.

WITNESSETH

In light of the above recitals, and in consideration of the mutual covenants contained herein, which covenants the Parties each recognize to constitute good, valuable, and sufficient consideration, and intending to be fully and legally bound hereby, the Parties enter into this Agreement and agree to act cooperatively pursuant to this Agreement's terms and conditions.

1. Petition for Rule Making to Modify Facilities.

a. As soon as practicable after the Parties enter into this Agreement, and in any event within 30 days from the date of this Agreement, Majac will present to Equinox for Equinox's review and approval a Joint Petition for Rule Making (the Joint Petition). That Joint Petition will propose amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, and concomitant modifications of WKGB's and WCDW's licenses, consistent with Recital D above. Majac may elect to specify, and to make the Joint Petition conditioned on acceptance by the FCC of reference geographic coordinates for the Channel 223A allotment at Conklin corresponding to a site to which Majac wishes to move the transmitter and antenna of WKGB. Equinox will promptly review Majac's proposed submission and, if it is consistent with the terms of this Agreement, will execute the Joint Petition (either directly or by its counsel) and will return it to Majac for filing with the FCC.

b. Majac will zealously prosecute that proposal before the FCC, and will promptly (and in any event within the time allotted for same by the FCC) file any Comments, amendment, clarification, or other material called for by the FCC so as to champion the merits of and to maximize the likelihood that the FCC will adopt the proposal in the Joint Petition. (For the purposes of this agreement, any action by the FCC staff on delegated authority will be equivalent to an action by the FCC itself.)

c. Equinox itself will file Comments supporting the Joint Petition. However, primary responsibility for prosecution of the Joint Petition will lie with Majac. Should any other person or entity attack the merits of the Joint Petition, or seek reconsideration, review, or judicial review of an FCC grant of the Joint Petition, Majac will vigorously defend its proposal or the FCC's grant of the Joint Petition, or both, until the grant has attained finality. To the extent permitted by the FCC's rules, Equinox will file Comments supporting Majac's filing or filings and will take no action or omit to take action that would be detrimental to a grant of the Joint Petition. (For the purposes of this Agreement, finality will attach to any action by the FCC as soon as such action is beyond all administrative and judicial reconsideration or review).

2. Applications To Implement Rule Making.

a. On or within ten (10) business days after the effective date of a Report and Order granting the Joint Petition, Majac and Equinox will tender any necessary applications for construction permits or modified licenses to physically implement facilities modifications to implement the FCC's action exchanging the two stations' communities of license. Furthermore, should any other person or entity attack the merits of Equinox's or Majac's application for a construction permit or modified license or seek reconsideration, review, or judicial review of an FCC grant of the same, Equinox and Majac will vigorously defend its application or their applications or the FCC's grant of its application or their applications, or both, through finality.

b. Promptly upon the FCC's grant of any necessary authority to modify WCDW's licensed facilities consistent with the parameters specified in Attachment C to this Agreement, Equinox will implement such authority and will, upon such implementation, seek a license to cover its modified facilities and commence modified broadcast operations with those facilities. Equinox will thereupon operate its modified WCDW facilities in compliance with all applicable FCC rules, regulations, and policies so as to safeguard the vitality of its modified station authorization with parameters consistent with this Agreement.

c. Promptly upon the FCC's grant of any necessary authority to modify WKGB's licensed facilities consistent with this Agreement, Majac will implement such authority and will, upon such implementation, seek a license to cover its modified facilities and commence modified broadcast operations with those facilities. Majac will thereupon operate its modified WKGB facilities in compliance with all applicable FCC rules, regulations, and policies so as to safeguard the vitality of its modified station authorization with parameters consistent with this Agreement.

3. Equinox's Compensation for Participation in the Improvement Effort.

Because Equinox's cooperation by modifying WCDW consistent with this Agreement will materially assist Majac in improving the facilities of WKGB (and in thereby enhancing the value of WKGB), Equinox, in return for its faithful cooperation under this Agreement and its full performance of all its duties under this Agreement, shall be entitled to compensation as follows.

a. For the period between the date of execution of this Agreement and the termination of this Agreement pursuant to Section 5 of this Agreement, Equinox shall be entitled to the suspension of monthly rent payments that would otherwise become due and payable to Majac under the Lease Agreement dated October 4, 1994 between KG Broadcasting, Inc. (Majac's predecessor-in-interest with respect to station WKGB) and Equinox (the Tower Lease).

b. Furthermore, for the period between the date of execution of this Agreement and the termination of this Agreement by Majac pursuant to Section 5, any \$1,000/month payments that would otherwise become due to Equinox under the letter agreement between the parties dated December 1, 1997, concerning the use of Equinox's studio facilities in Conklin, New York will be suspended, and the amounts of such payments in excess of such payments that would otherwise have become due pursuant to Section 3(a) hereof shall instead accrue as a credit to Equinox's benefit as an offset against the rent payments that may become due to Majac in the future under the Tower Lease, or, if the Tower Lease terminates, for payment to Equinox in a lump sum upon termination of this Agreement, as further described in Section 6 below.

c. The Parties recognize that each of them will have to make several FCC filings to fully perform under this Agreement. Majac will pay any FCC filing fees associated with Equinox's filings and, upon the presentation of invoices by Equinox, will promptly pay directly

to the service providers any reasonable attorney's and consulting engineers' fees incurred by Equinox in connection with Equinox's FCC filings under of this Agreement. Majac's obligation under this sub-section shall be limited to the anticipated rule making and license modification for WCDW and not the preparation, negotiation, or enforcement of this Agreement.

d. Should the FCC by final action in rule making adopt a Report and Order granting the Joint Petition and modifying the license of WCDW to specify Susquehanna, Pennsylvania, as that station's community of license, and modifying the license of WKGB to specify Conklin, New York, as that station's community of license, then upon the Report and Order becoming a final action, Majac will pay to Equinox the sum of [REDACTED] as follows. It is agreed that the condition that triggers Majac's payment obligation to Equinox under this Section 3(d) of this Agreement is only that the communities of license of each station be exchanged, without conditions reasonably deemed in good faith to be materially adverse to either party, and not that Majac also be granted a construction permit to relocate the transmitter site of WKGB.

i. within five (5) days after the execution of this Agreement, Majac will place the sum of [REDACTED] in escrow pursuant to the Escrow Agreement which forms Attachment A to this Agreement. That sum will remain in escrow and will be released to Equinox by cashier's check, or by wire transfer, within five (5) days after the Report and Order which modifies WCDW's license consistent with the terms of this Agreement has attained finality (the Due Date). Should modification of WCDW's and WKGB's licenses as this Agreement contemplates prove beyond the Parties' ability to accomplish within the term of this Agreement, or should the term of this Agreement expire without implementation of an exchange of communities of license of WCDW and WKGB, the Escrow Agent return the escrowed funds to Majac. Any interest earned by the escrowed funds shall belong to Majac in all events.

ii. also on the Due Date, Majac will pay Equinox the additional sum of [REDACTED] by cashier's check, or by wire transfer.

iii. also on the Due Date, Majac will tender to Equinox its Promissory Note (Note) in the amount of [REDACTED] in the form of Attachment B to this Agreement. In order to assure payment of the Note, Majac agrees that payment shall be personally guaranteed by Jack T. Steenbarger and Marc D. Steenbarger, and payment of any remaining balance shall be immediately due upon the sale of all or substantially all of Majac's assets or of Station WKGB or transfer of majority control of Majac and paid no later than the closing on such sale or transfer, in each case such that fifty percent (50%) or more control of either Maker or Station WKGB-FM is no longer held by any combination of Jack T. Steenbarger, Marc D. Steenbarger, and members of their immediate families (including, but not limited to, children and siblings).

In the event that any member of the family (including, but not limited to, children and siblings) of Jack T. Steenbarger or Marc D. Steenbarger acquires an ownership interest in Majac or Station WKGB from either Jack T. Steenbarger or Marc D. Steenbarger subsequently to the date of this Agreement, such family member shall execute a personal guarantee on the same terms and conditions of this Section 3(d)(iii). Such family member's personal guarantee shall be executed no later than the closing on the acquisition of such ownership interest. The parties agree that, due to the unique subject matter of this Section 3(d)(iii), monetary damages will be insufficient to compensate Equinox in the event of a breach by Majac; therefore, the parties agree that in the event of a breach of Section 3(d)(iii) by Majac, Equinox shall be entitled to specific performance of Majac's obligations hereunder, without any showing of actual damage or inadequacy of legal remedy.

e. Should the FCC by final action in rule making adopt a Report and Order granting the Joint Petition, and should Majac thereafter abandon use of the transmitter site currently shared by WKGB and WCDW, Majac will also assign to Equinox Majac's leasehold interest under the Ground lease dated September 28, 1990 between Marion A. Philley and WKGB-FM/Benjamin J. Smith (Majac's predecessor-in-interest with respect to station WKGB). At the same time, Majac will assign to Equinox Majac's property interests in the antenna tower, equipment shelter, and all of Majac's non-removable personalty at the site covered by the Ground Lease, and will assign to Equinox all of Majac's rights under the Tower Lease.

4. **Term.** Unless terminated earlier pursuant to Section 5 below, the term of this Agreement shall commence on the date hereof and shall continue for five (5) calendar years from the date hereof. The expiration of the term of this Agreement shall not relieve Majac of its obligations under the Note, but rather the Note shall be governed by the terms and conditions set forth therein.

5. **Termination.** This Agreement may be terminated only by mutual agreement of the parties or in one of the three following ways.

a. This Agreement will terminate upon the full performance of both Parties' obligations to each other consistent with the terms of this Agreement.

b. In the alternative, either Party to this Agreement may terminate this Agreement in the event of a material breach of any of the terms of this Agreement by the other party, which breach is not cured within ten (10) business days following delivery of written notice pursuant to the terms of this Agreement of such breach together with a demand that it be cured.

c. In the further alternative, either party may terminate this Agreement for any reason after fifteen (15) months from the date hereof if a Report and Order granting the Joint Petition has not been released by then, or if an action of the FCC includes a condition

reasonably deemed in good faith to be materially adverse to the terminating party that was not contemplated at the time of execution of this Agreement and has not by then been either removed or waived by the affected party. Majac may also terminate this Agreement at any time in the event of dismissal, or denial of the Joint Petition for Rule Making or any license or construction permit filed by either party after the Rule Making if Majac elects not to pursue a petition for reconsideration, review, or appeal of such denial or dismissal, which election Majac may make in its sole discretion and without liability to Equinox, notwithstanding the obligations of the Parties under Paragraphs 1(c) and 2 hereof.

6. Reconciliation of Credits.

a. If the FCC modifies the license of WCDW consistent with the terms of this Agreement, then within five (5) days after that modification attains finality, Majac will pay Equinox by certified check, or by wire transfer, the sum equal to the total credits that have accrued in Equinox's favor pursuant to Section 3(b), above, and under the December 1, 1997, letter agreement between Equinox and Majac concerning Majac's use of Equinox's studio facilities in Conklin, New York.

b. If this Agreement is terminated pursuant to Section 5(b) or 5(c) above, Equinox will be entitled, as of such termination date, to begin applying the credits that have accrued in Equinox's favor pursuant to Section 3(b), above, against any rental payments due to Majac under the Tower Lease, and may continue to so apply such credits until they are exhausted. If the Tower Lease terminates prior to the exhaustion of such credits, within ten (10) business days of such Tower-Lease termination date, Majac will pay Equinox, by certified check or by wire transfer, a sum equal to the total credit that remains outstanding in Equinox's favor as of that Tower-Lease termination date.

7. Ownership and Control of Broadcast Facilities.

a. Notwithstanding any contrary provision contained in this Agreement, and consistent with the Communications Act of 1934, as amended (the Act), and the FCC's rules, regulations and policies promulgated under the Act, Majac shall have no ownership interest in Equinox's station WCDW, nor any right *de jure* nor any ability *de facto* to exercise control over the broadcast programming, staffing, finances, or day-to-day operations of Equinox's broadcast station WCDW.

b. Likewise, and again notwithstanding any contrary provision contained in this Agreement, and consistent with the Act and the FCC's rules, regulations and policies promulgated under the Act, Equinox shall have no ownership interest in Majac's station WKGB, and no right *de jure* nor any ability *de facto* to exercise control over the broadcast programming, staffing, finances, or day-to-day operations of Majac's broadcast station WKGB.

8. **No Agency or Vicarious Liability.** No agency relationship between the Parties will arise from or be expressed or implied by the terms of this Agreement, nor shall this Agreement be construed to create a joint venture or partnership between the parties. Neither Party shall hold itself out as an agent, partner or joint venturer with the other. Except as this Agreement explicitly provides, each Party shall be solely responsible for all obligations incurred in the operation of its own station, including, without limitation, for all debts and other liabilities preexisting or later incurred in connection with its respective business operations, for all wages, taxes, salaries and benefits owed to its own station's staff, for all license, regulatory, and franchise fees associated with its respective station, and the other Party shall have no liability therefor, either in whole or in any part. No party other than Majac, Equinox, or an authorized assignee of either of them shall have any claim or right to any benefit under this Agreement.

9. **Expenses.** Majac will bear all, including its own, costs associated with prosecuting the Joint Petition for Rule Making and any subsequent applications or other governmental filings necessary to implement the station modifications this Agreement contemplates, subject to the conditions of Paragraph 3(c) hereof.

10. **Regulatory Authority.** The Parties intend this Agreement to be fully consistent with the Act and with all applicable rules and regulations and policies of the FCC. Both Parties therefore agree that if at any time Congress amends the Act, or a Court of competent jurisdiction by final decree interprets the Act, or the FCC interprets or changes its rules, regulations, or policies so as to require any changes in any provision of this Agreement, both parties will proceed in good faith to seek to amend this Agreement as necessary to comply with such rules or policies consistent with the overall purposes of this Agreement, subject to Section 19.

11. **Further Assurances.** Each Party agrees to promptly execute and deliver additional documents and take such other actions as are reasonably necessary for the purposes of carrying out this Agreement.

12. **Attorney's Fees.** In the event either Party finds it necessary to bring a legal action to enforce any rights or obligations hereunder, the prevailing Party shall be entitled to receive, in addition to any other award to which it is entitled, an amount sufficient to cover reasonable attorneys fees and costs.

13. **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and to their successors, assigns, and representatives, including, without limitation, any successor licensee of WCDW or WKGB. However, neither Party shall assign its rights nor delegate its duties or obligations arising under this Agreement, except to a successor licensee, without the other party's prior written consent, which will not be unreasonably withheld. Moreover, any agreement by either Party to sell its station to a third Party shall contain a provision that expressly requires the third party to fully and faithfully perform each and every one of its assignor's obligations under this Agreement. Furthermore, any assignment by Majac of station

WKGB to a third party shall not release Majac's payment obligations to Equinox under this Agreement. The failure of any such assignment agreement to include such terms binding the proposed assignee to fully and faithfully discharge each and every one of its assignor's obligations under this Agreement will give the non-assigning Party the right to seek injunctive relief directing the party attempting to assign its station to reformulate the station assignment agreement to include such terms binding its proposed assignee. Any purported assignment or delegation by either party in contravention of this Section shall be null and void.

14. **Termination of Certain Pre-Existing Agreements.** At such time as Majac commences operating WKGB under program test authority as a Conklin station at a transmitter site other than the site currently shared with WCDW, the transmitter site lease agreement referred to in Paragraph 3(a) hereof and the letter agreement concerning studio sharing referred to in Paragraph 3(b) shall both terminate. If this Agreement is terminated without Majac commencing such operation, both the lease and letter agreement shall remain in effect in accordance with their respective terms; and in that event, payments under both shall resume effective upon termination of this Agreement, subject to Equinox's right to credits pursuant to Section 6.

15. **Representations and Warranties.** Each party represents and warrants to the other that it has the legal right, power, and ability to enter into this Agreement and to fully perform its obligations hereunder, that its performance hereof will not violate the terms of any other agreement by which it is bound or of which it is a party and that it is the licensee of its respective station and the license for its station is in good standing with the FCC and not subject to any order or decree or pending action to modify the terms and conditions of said license.

16. **Controlling Law.** To the extent not governed by federal law, the parties' rights and obligations under this Agreement shall be governed by the laws of the State of New York applicable to transactions conducted entirely within that state. Furthermore, Majac agrees that proper venue for any suit or action at law under this Agreement will lie in New York.

17. **Previous Agreements.** Neither of the Parties to this Agreement has made any inducements, representations or warranties to the other with respect to the subject matter hereof, except as specifically set forth in this Agreement. No provision of this Agreement shall be changed, reformed, or modified, nor will this Agreement be discharged in whole or in part, except as expressly provided herein or by an agreement in writing, signed by the Party against whom the change, modification or discharge is claimed or sought to be enforced. No waiver of any of the conditions or provisions of this Agreement will be effective and binding unless such waiver shall be in writing and signed by the Party against whom the waiver is asserted. No waiver of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or of any other provision.

18. **Notices.** All notices required under this Agreement shall be made by prepaid certified mail, return receipt requested, to the addresses for notice set forth below: If to Majac:

Mr. Marc Steenbarger
Majac of Michigan, Inc.
3301 Country Club Road, Suite 2218
Endwell, NY 13760-3456

with a copy, which will not comprise notice, to:

Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101

If to Equinox:

Equinox Broadcasting Corporation
George Hawras, President
1907 Darby Road
Havertown, Pennsylvania 19083

With a copy, which will not comprise notice, to:

John J. McVeigh, Esq.
12101 Blue Paper Way
Columbia, Maryland 21044-2787

19. **Reformation and Severability.** If any provision of this Agreement shall be found by a court or administrative agency of competent authority to be unlawful, the parties shall cooperate to reform the unlawful aspect so as to make it lawful; or if they are unable to do so, the remainder of the Agreement shall remain in effect with the offending provision(s) removed, provided, however, that Majac shall not be required to go forward with this Agreement as reformed or severed if it is not able to change the community of license of WKGB to Conklin, and Equinox shall not be required to go forward if it is unable to receive the payments to which it is entitled under Section 3.

20. **Headings.** The headings that this Agreement contains are for convenience of reference only and will not be read or construed to affect the meaning, substance, or interpretation of this Agreement.

21. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument.

MAJAC OF MICHIGAN, INC.

By _____
Marc D. Steenbarger, Its Secretary

EQUINOX BROADCASTING CORPORATION

By _____
George Hawyas, Its President

Station Modification Agreement: WKGB and WCDW
July 23, 1998
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21. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument.

MAJAC OF MICHIGAN, INC.

By Marc D. Steenbarger
Marc D. Steenbarger, Its Secretary

EQUINOX BROADCASTING CORPORATION

By _____
George Hawras, Its President

PROMISSORY NOTE

[REDACTED]

FOR VALUE RECEIVED, including performance of obligations under that certain "Station Modification Agreement" between the Maker and Payee, dated July 23, 1998, the undersigned, Majac of Michigan, Inc. ("Maker"), a Michigan corporation, promises to pay to the order of Equinox Broadcasting Corporation ("Payee"), a Pennsylvania corporation, in lawful money of the United States of America, the principal sum of [REDACTED] and [REDACTED] with simple interest (commencing as of the date hereof) on the unpaid principal balance, accruing at the rate of [REDACTED].

[REDACTED]

The principal and interest due on this note shall be paid in equal _____ installments of principal and interest, commencing thirty (30) days after the date of execution of this Note and subsequent payments on or before the same day of each subsequent month until the entire principal sum and accrued interest have been paid in full. All payments shall be applied first in reduction of unpaid accrued interest, and any balance remaining shall then be applied in reduction of unpaid principal.

This Note may be prepaid in whole or in part at any time without penalty. Any such prepayment shall first be applied toward accrued by unpaid interest, with the balance applied to unpaid principal.

Failure of Maker to make the full amount of any payment to Payee due under this Note within thirty (30) days after the due date, so long as any amount of principal or interest remains unpaid, shall constitute an event of default under this Note. Upon such default, Maker may at any time declare the entire outstanding principal amount and accrued interest thereon immediately due and payable. Payee may exercise this option to accelerate at any time when Maker is in default, regardless of any prior forbearance by Payee.

The full balance of any unpaid principal and any then accrued interest on this note shall be paid in full to Holder no later than the date of closing on any sale of all or substantially all of the assets of Maker, the sale of Radio Station WKGB-FM by Maker, or the sale or transfer of shares of stock of Maker, in each case such that fifty percent (50%) or more control of either Maker or Station WKGB-FM is no longer held by any combination of Jack T. Steenbarger, Mark D. Steenbarger, and members of their immediate families (including, but not limited to, children and siblings).

To secure payment of this Note, Jack T. Steenbarger individually and Marc D. Steenbarger individually each jointly and severally guarantee the payment obligations of the Maker.

In the event of default and the placing of this Note in the hands of an attorney or other agent for collection, Maker agrees to pay all costs and expenses of collection, including reasonable attorneys' fees not to exceed fifteen percent (15%) of the total amount due, related to the collection of all or any part of amounts due hereunder.

Maker hereby waives demand and presentation for payment, notice of nonpayment and dishonor, protest and notice of protest.

Any notices given under this Note shall be given in writing, by first class or more rapid class of U.S. Mail, or overnight delivery by a recognized courier, addressed to the Maker and Payee at the addresses set forth in the Station Modification Agreement and to Jack T. Steenbarger and Marc D. Steenbarger at the address of Maker.

IN WITNESS WHEREOF, Maker has executed this Promissory Note as of this ____ day of _____, 199 in the city of Binghamton, New York.

ATTEST:

MAJAC OF MICHIGAN, INC.

By: _____
Marc D. Steenbarger
Secretary

The payment of all amounts due under this Note is personally guaranteed jointly and severally by Jack T. Steenbarger and Marc D. Steenbarger.

Jack T. Steenbarger

Marc D. Steenbarger